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PART V

Bills introduced in the Constituent Assembly of India (Legislative), Reports of Select Committees presented to the Constituent Assembly Legislative and Bills published under Rule 18 of the Constituent Assembly (Legislative) Rules.

GOVERNMENT OF INDIA

CONSTITUENT ASSEMBLY OF INDIA (LEGISLATIVE)

The following Bill was introduced in the Constituent Assembly of India (Legislative) on the 29th November 1947:—

L. A. BILL* No. 57 of 1947.

A bill further to amend the Indian Income-tax Act, 1922, and the Business Profits Tax Act, 1947.

Whereas it is expedient further to amend the Indian Income-tax Act, 1922 (XI of 1922) and the Business Profits Tax Act, 1947 (XXI of 1947) for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. Short title.—This Act may be called the Income-tax and Business Profits Tax (Amendment) Act, 1947.

2. Amendment of Act XI of 1922.—(1) In the Indian Income-tax Act, 1922,—

(a) in clause (4A) of section 2, the words and brackets “(other than Agricultural land)” shall be omitted, and to that clause the following shall be added, namely:—

“(iii) any land from which the income derived by the assessee is agricultural income;”;

(b) for the last proviso to clause (6A) of section 2, the following proviso shall be substituted, namely:—

“Provided further that the expression ‘accumulated profits’, wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946;”;

(c) in sub-section (3) of section 12B, after the words “property of the assessee” the words “by succession, inheritance or devolution or” shall be inserted.

* The Governor General has accorded the sanction required by sub-section (1) of section 141 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947, to the introduction of the Bill in the Constituent Assembly of India (Legislative)

(2) The amendments made by sub-section (1) shall have effect in relation to all assessments to income-tax or super-tax for the year ending on the 31st day of March, 1948 and subsequent years.

3. Amendment of Act XXI of 1947.—(1) In the Business Profits Tax Act, 1947,—

(a) after the first proviso to section 5, the following further proviso shall be inserted, namely:—

“Provided further that where the profits of a part only of a business carried on by a person who is not resident in British India or not ordinarily so resident accrue or arise in British India or are deemed under the Indian Income-tax Act, 1922, so to accrue or arise, then, except where the business being the business of a person who is resident, but not ordinarily resident, in British India is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business.”;

(b) in sub-section (1) of section 11, after the words “the profits” the words “taxable profits” shall be inserted;

(c) in section 10, after the words “provisions of this Act” the words “and with such modifications, if any, as may be prescribed” shall be inserted;

(d) in Schedule 11, after rule 2, the following rule shall be inserted, namely:—

“2A. Notwithstanding anything contained in rule 2, where only a part of the profits of a company is chargeable under the provisions of this Act, its capital shall be the sum ascertained in accordance with the said rule diminished by an amount which bears to that sum the same proportion as the amount of its profits not so chargeable bears to its total profits.”

(2) The amendments made by sub-section (1) shall be deemed to have effect from the date on which the Business Profits Tax Act, 1947, came into force.

STATEMENT OF OBJECTS AND REASONS

As explained in the Notes on Clauses, the Bill makes amendments in the Indian Income-tax Act, 1922, in respect of certain provisions relating to Capital Gains Tax, and the Business Profits Tax Act, 1947. The amendments are of a clarificatory nature.

R. K. SHANMUKHAM CHETTY.

NOTES ON CLAUSES

Clause 2(1).

Sub-clause (a).—Capital asset is defined as property of any kind ‘other than agricultural land’. As the definition stands, capital gains arising from the sale, exchange or transfer of any agricultural land, whether situated within or without the provinces of India, would not be liable to Capital Gains Tax. Under the Income-tax Act agricultural income is, however, exempt only if it is derived from land assessed to land revenue in the provinces of India. The object of the amendment is to secure that the capital gains arising from the sale, exchange or transfer of any land would be exempt only if the agricultural income derived from that land is exempt from tax under the Income-tax Act. Thus, the amendment puts the exemption of capital gains in respect of land on the same footing as the exemption of ‘agricultural income’.

Sub-clause (b).—According to Clause (6A) as it stands a dividend paid out of capital gains made during the 'previous year' relevant to the assessment for 1947-48 would be chargeable, whereas according to the main charging section, viz., section 12B, only dividends paid out of capital profits made after the 31st March, 1946 would be chargeable. There is thus want of correspondence between section 2 (6A) and section 12B which the amendment remedies.

Sub-clause (c).—Under sub-section 3 of section 12B the actual cost of a capital asset to the assessee in any of the circumstances mentioned in the third proviso to sub-section (1) is to be taken as the actual cost thereof to the previous owner. That proviso does not cover the case of devolution of property by inheritance or succession. The amendment makes good this omission in sub-section (3) and is intended to safeguard the interest of the assessee, as without such amendment the actual cost to the assessee for computing his capital gains may be taken as nil.

Clause 3(1).

Sub-clause (a).—This proviso existed in section 5 of the Excess Profits Tax Act 1940, but was omitted from the Business Profits Tax Act, considering that the substantive section 5 of the Act restricted the application of the Act to such business only as was chargeable under the Income-tax Act. As in amending Schedule II of the Act for purposes of computing the capital of a company whose entire profits are not chargeable, a doubt has arisen on this point, it is necessary to make it clear by the insertion of the proviso that the application of the Act is not wider in scope than that of the Excess Profits Tax Act or the Income-tax Act.

Sub-clause (b) is self-explanatory.

Sub-clause (c).—The amendment enables the Central Board of Revenue to prescribe by rule the necessary modifications in those provisions of the Income-tax Act which are applied to the business profits tax.

Sub-clause (d).—This amendment secures that in the case of a company whose entire profits are not chargeable, the capital for purposes of allowing abatement to the company is to be reduced by a sum which bears to the capital the same proportion as the profits not so chargeable bear to the total profits.

M. N. KAUL,

Secy. to the Govt. of India.

